# Government Response to the Senate Finance and Public Administration Legislation Committee Report

## APPs

| | Recommendation[1] | Government Response | Place in Bill | Page in EM |
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| 1 | That the Department of Prime Minister and Cabinet re-assess the draft APPs with a view to improving clarity through the use of simpler and more concise terms and to avoid the repetition of requirements that are substantially similar. | Accept in principle | Schedule 1<br><br>The APPs generally have been restructured to shorten the length of the principles. This has been achieved by use of a table in clause 16A of the Bill which captures the common permitted situations for the collection, use and disclosure of personal information. The use of the table has reduced repetition within the APPs. | 72–89 |
| 2 | That reconsideration be given to the inclusion of agency specific provisions in the APPs in the light of the Office of the Privacy Commissioner's suggestion that agency specific matters should, in the first instance, be dealt with in portfolio legislation. | Not accept | N/A | N/A |
| 3 | That the OAIC develop guidance on the interpretation of 'personal information' as a matter of priority. | Support | N/A | N/A |
| 4 | That the OAIC develop guidance on the meaning of 'consent' in the context of the Privacy Act as a matter | Support | N/A | N/A |

[1] Section references are to the exposure draft.

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| | of priority. | | | |
| 5 | That the Government, in consultation with the OAIC, give consideration to the provision of a transition period for entities to fully comply with the implementation of the new Privacy Act. | Accept | Schedule 6 | 267–271 |
| 6 | That a note be added at the end of APP 1(5) which indicates that the form of an entity's privacy policy 'as appropriate' will usually be an online privacy policy. | Accept in principle | Note after APP 1.5 | 73–74 |
| 7 | That the wording of APP 2(2)(a) be reconsidered to ensure that the exception to the anonymity and pseudonymity principle cannot be applied inappropriately. | Accept in principle | APP 2.1 – insertion of words 'in relation to a particular matter' | 74 |
| 8 | That in relation to the collection of solicited information principle (APP 3), further consideration be given to:<br>• whether the addition of the word 'reasonably' in the 'necessary' test weakens the principle; and<br>• excluding organisations from the application of the 'directly related to' test to ensure that privacy protections are not compromised. | Accept in part | APP 3.2 – an organisation must not collect personal information unless reasonably necessary for one of its functions and activities.<br>See EM at page 53 for confirmation that concept of 'reasonably necessary' does not weaken principle. | 53, 74–77 |
| 9 | That the term 'no longer personal information' | Accept in principle | APP 4.3(b) – use of term 'de-identified information' | 77–79 |

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| | contained in APP 4(4)(b) be clarified. | | | |
| 10 | That the drafting of APP 7 be reconsidered with the aim of improving structure and clarity to ensure the intent of the principle is not undermined. | Accept in principle | APP 7 has been re-structured to simplify and to make consistent with drafting approach in credit reporting provisions. | 81–82 |
| 11 | That the note to APP 7(1) be redrafted to better reflect the position outlined in the Government response. | Accept in principle | Note below APP 7.1 refers to Privacy Act section 7A – acts of certain agencies treated as acts of organisation | 81–82 |
| 12 | That the Australian Information Commissioner develop guidance in relation to direct marketing to vulnerable people. | Support | N/A | N/A |
| 13 | That the structure of APP 7(2) and APP 7(3) in relation to APP 7(3)(a)(i) be reconsidered. | Accept in principle | APP 7 – redrafted along lines as indicated in item 10 above. | 81–82 |
| 14 | That a note be added to the end of APP 8 making reference to section 20 of the new Privacy Act. | Accept in principle | Note below APP 8.1 referring to clause 16C in Bill (equivalent to clause 20 in exposure draft) | 82–84 |
| 15 | That the Department of Prime Minister and Cabinet develop explanatory material to clarify the application of the term 'disclosure' in APP 8. | Accept | N/A | 82–84 |
| 16 | That the OAIC develop guidance on the types of contractual arrangements required to comply with APP 8 and that guidance be available concurrently with the new Privacy Act. | Support | N/A | N/A |

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| 17 | That, when the Australian Government enters into an international agreement relating to information sharing which will constitute an exception under APP 8(2)(d), the agency or the relevant minister table in Parliament, as soon as practicable following the commencement of that agreement, a statement indicating:<br>• the terms under which personal information will be disclosed pursuant to the agreement; and<br>• the effect of the agreement on the privacy rights of individuals. | Not accept | N/A | 82–84 |
| 18 | That further consideration be given to the wording of the law enforcement exception in APP 8(2)(g) to ensure that the intention of the provision is clear. | Not accept | N/A | 82–84 |
| 19 | That section 19, relating to the extraterritorial application of the Act, be reconsidered to provide clarity as to the policy intent of the provision. | Accept in principle | Schedule 4, subclauses 5B(1) and (1A) along with notes | 217–218 |
| 20 | That the Department of Prime Minister and Cabinet develop explanatory material in relation to the application of the accountability provisions of section 20. | Accept | Clause 16C – Acts and practices of overseas recipients of personal information | 70–71 |
| 21 | That the term 'reasonably necessary' be replaced with 'necessary' in APP 9(2)(a), (b) and (f). | Not accept | N/A | N/A |

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| 22 | That the OAIC undertake a review of agency voluntary data-matching guidelines, including emerging issues with use of government identifiers, and that the outcome inform further consideration of the extension of APP 9 to agencies. | Support | N/A | N/A |
| 23 | That proposed APP 10(2), pertaining to the quality of personal information disclosed by an entity, be re-drafted to make clear the intended use of the term 'relevant'. | Accept in principle | APP 10.2 – inclusion of words 'having regard to the purpose of the use or disclosure' | 85 |
| 24 | That a definition of the term 'interference' used in proposed APP 11(1)(a), pertaining to the security of personal information, be provided or a note included in the legislation to explain its meaning in this context. | Accept in principle | APP 11 - no definition or note provided but see EM at 86 for explanation of 'interference' | 86 |
| 25 | That the Australian Information Commissioner provide guidance on the meaning of 'destruction' in relation to personal information no longer required and the appropriate methods of destruction of that information. | Support | N/A | N/A |
| 26 | That, in relation to proposed exceptions provided for in APP 12(3);<br>• the Australian Information Commissioner provided guidance in relation to the application of the 'frivolous and vexatious' exception (APP 12(3)(c)); | Accept in principle | APP 12.3(c) – the Government response encourages the development of OAIC guidance.<br>APP 12.3(3) - clarity provided in the EM<br>APP 12.3(j) - clarity provided in the EM | 87–88 |

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| | • clarity be provided as to the stage at which the negotiations exception in APP 12(3)(e) may be invoked; and<br><br>• further consideration be given to the exception in APP 12(3)(j) in relation to commercially sensitive decisions to ensure that the rights currently provided for in the Privacy Act are not diminished. | | | |
| 27 | That a note be added to proposed APP 12(4)(a) to clarify that a reasonable period of time in which an organisation must respond to a request for access would not usually be longer than 30 days. | Accept in principle | N/A – recommendation best achieved through OAIC guidance noting responses to straightforward requests should be within 14 days, or 30 days for more complicated requests | 87 |
| 28 | That APP 12(8) be amended so that it is made clear that access charges imposed by organisations should only be charged at a level reasonably necessary to recoup the costs incurred by the entity. | Accept in principle | APP 12.8(b) | 87–88 |
| 29 | That the decision to omit the term 'misleading' in APP 13, relating to the correction of personal information, be reconsidered. | Accept | APP 13.1(b)(i) and 13.4(b) | 88–89 |

## Credit Reporting

| | Recommendation | Government Response | Place in Bill | Page in EM |
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| 1 | That consideration be given to locating the credit reporting provisions in a schedule to the Privacy Act. | Accept | N/A<br><br>Note: The Government considered the location of the credit reporting provisions and determined they are best located in the same place as the existing provisions. The Australian Privacy Principles (APPs) will be inserted as a schedule to the Privacy Act | N/A |
| 2 | That the Exposure Draft be reviewed to ensure that the provisions are clear and concise. | Accept | Schedule 2<br><br>The credit reporting provisions were reviewed as recommended in the preparation of the Bill | 90–196 |
| 3 | That the definitions be reviewed to ensure consistency across the Privacy Act and, to the extent possible, that definitions are standalone provisions. | Accept | Schedule 2<br><br>Items 1 to 65 insert key definitions relating to credit reporting into subsection 6(1) of the Act.<br><br>Clauses 6G and 6L–6V are standalone definitional provisions relating to credit reporting.<br><br>The EM contains an introduction on Schedule 2 providing an overview of the credit reporting provisions, including an explanation of the meaning of, and relationship between, the key | 90–196<br><br>90–117<br><br>118, 122–130 |

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| | | | terms used in the provisions (see pp 96 to 98) | |
| 4 | That the Exposure Draft be amended to incorporate all of the relevant requirements of the APPs for both credit reporting agencies and credit providers, in addition to the more specific or different requirements for credit reporting. | Accept in principle | For credit reporting bodies see clause 20A.<br><br>For credit providers and other recipients additional provisions have been inserted to clarify the relationship of each provision with the relevant APPs<br><br>For credit providers see clauses 21A and subclauses 21B(7), 21D(7), 21G(7), 21T(8), 21U(4) and 21V(6).<br><br>For information recipients see subclause 22A(7).<br><br>For mortgage insurers or trade insurers see subclause 22C(4).<br><br>For related bodies corporate see subclause 22D(4).<br><br>For credit managers see subclause 22E(4).<br><br>For advisers see 22F(4).<br><br>For recipients of pre-screening assessments see clause 20H(7). | 130–131<br><br>130–131, 160–181<br><br>184<br><br>186<br><br>186<br><br>187<br><br>188<br><br>141 |
| 5 | That the Department of Prime Minister and Cabinet undertake consultations to ensure that the needs of industry and consumers are addressed during the lead up to the implementation of the new credit reporting | Accept | N/A | N/A |

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| | regime. | | | |
| 6 | That the OAIC consult with industry and consumer advocates to provide guidance on any consumer education campaigns in relation to the new credit reporting system. | Accept in principle | N/A | N/A |
| 7 | That consideration be given to including a requirement in the provisions for the powers and functions of the Australian Information Commissioner that a regular audit of a randomly selected credit reporting agency and a credit provider in Australia be conducted by the Australian Information Commissioner. | Accept in principle | Privacy Act, paragraph 28A(1)(g) – Functions of the Commissioner in relation to credit reporting<br><br>The Government considers that it is more appropriate for the Commissioner to retain the current discretion to exercise the performance audit power as required, allowing the Commissioner to determine an audit program consistent with the overall priorities and resources of the OAIC. | N/A |
| 8 | That consideration be given to a change of approach in dealing with serious credit infringements to allow for those listings, not relating to intentional fraud, to be dealt with in a different manner. | Accept | Item 63 – new definition of 'serious credit infringement' in subsection 6(1) of the Act – additional requirement for six months to elapse since the credit provider last had contact with the individual before an act can be considered to be a serious credit infringement. It was intended that this would provide a sufficient period for an individual to become aware of an overdue payment and to contact the credit provider to make appropriate arrangements. | 116–117 |

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| | | | The credit reporting code of conduct will also contain further obligations in relation to serious credit infringement. In particular, the CR Code will provide further requirements and guidance in relation to the reasonable steps that a credit provider must take to contact an individual. It is expected that privacy and consumer credit advocates will participate in the development of the code before it is submitted to the Information Commissioner for consideration. | |
| 9 | That the Exposure Draft be reviewed to ensure that the intent of the Government's response to ALRC Recommendation 57–5, that credit reporting agencies be required to advise a credit provider that they are unable to release information due to an individual's concerns about possible fraud, is clearly provided for. | Accept | Clause 20K – Use or disclosure of pre-screening assessments | 142–143 |
| 10 | That the time of the initial ban period be extended from 14 days to 21 days. | Accept | Subclause 20K(3) | 143 |
| 11 | That consideration be given to expanding the meaning of 'new arrangement information' to include circumstances where an individual seeks new terms or conditions for their original consumer credit before they default. | Noted | Clause 6S – definition of 'new arrangement information'<br><br>Provision is unchanged<br><br>Upon considering the meaning of new arrangement information, the Government determined that this provision will remain | 127–128 |

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| | | | unchanged. The Government response to ALRC recommendation 58-2 clearly states that the listing of new arrangement information 'will only apply to schemes that are as a result of a previous default or serious credit infringement listing'. The definition of new arrangement information reflects this policy decision.<br><br>In addition, the Government was concerned that extending the meaning as recommended by the Committee would capture situations in which an individual has obtained a hardship variation (exercising their rights under section 72 of the National Consumer Credit Protection Act 2009). The Government was concerned that individuals should not be discouraged from seeking hardship variations if they are to be included as part of their credit reporting information. | |
| 12 | That the time period for the correction of credit information is amended to 15 days. | Accept in principle | Subclause 20T(2) – period is 30 days<br><br>The Government considers a reduction in the time period to 15 days is unnecessary due to the improvements to correction and complaint procedures, which will reduce delays. The correction and complaint procedures have been streamlined to remove the "two-step" complaint process that was presented in the exposure draft where an individual seeks correction of their credit | 149–150 |

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| | | | reporting information – Clause 23A and clause 23C. This will result in a simpler complaints process, which achieves the Committee's objective of reducing delays for consumers. | |
| 13 | That the issue of extensions of time to respond to requests for correction of records be addressed in the Credit Reporting Code of Conduct. | Accept | N/A | N/A |
| 14 | That consideration be given to implementing the recommendations of the OAIC in relation to the substantiation issue. | Accept | Subclause 20U(3) – CRB must give reasons for not making correction<br><br>Clause 20N – general obligation for CRBs to keep credit information accurate, up-to-date and complete will operate to require information that cannot be substantiated to be corrected. | 151<br><br>145 |
| 15 | That the opt-out provisions in section 110 be reviewed to ensure consistency with other consumer credit regulatory regimes. | Accept | Clause 20G<br><br>The provisions have been reviewed as recommended and the Government considers the opt-out model is consistent with other consumer credit regulatory regimes. | 138–140 |
| 16 | That section 115 be reviewed in light of the OAIC's comments relating to disclosure of de-identified information and the rules to be issued. | Accept | Clause 20M (2)(a) – use of de-identified information is permitted if for the purpose of conducting research in relation to the assessment of the credit worthiness of individuals, and (b) the credit reporting body complies with the rules made | 144 |

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| | | | by the Commissioner.<br><br>20M(3) provides for the Commissioner to make rules and (4) sets out matters which could be covered by the rules. | |
| 17 | That the Credit Reporting Code of Conduct include requirements in relation to the standard of information provided to a consumer in relation to accessing free credit reports and those for which there is a charge. | Accept | N/A | N/A |
| 18 | That consideration be given to providing in subsection 126(4) a general requirement for notification of destruction of credit reporting information to all recipients of credit reporting information in cases of fraud and not only limited to when an individual makes such a request. | Accept | Subclause 20Y(4) – notification of destruction to third parties | 156 |
| 19 | That section 132 be reviewed to ensure that the disclosure obligations on credit providers in relation to 'credit information' protect all credit information collected by credit providers. | Accept | Clause 21D – disclosure of credit information to a credit reporting body<br><br>Upon review the Government has determined that no change is necessary. | 160–163 |
| 20 | That greater clarity be provided as to the timeframes for disclosure of default information pursuant to paragraph 132(2)(e) either in Credit Reporting Code or in guidance from the OAIC. | Accept | Clause 21D – disclosure of credit information to a credit reporting body | 160–163 |

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| 21 | That a definition of 'credit manager' be provided | Accept in principle | The term is explained in the Explanatory Memorandum, by noting that a credit manager is someone who manages credit, and to whom disclosures are permitted for that purpose (the term managing credit is defined to exclude debt collection, to ensure that debt collectors do not have access to the information, consistent with policy). | 112 |
| 22 | That further consideration be given to the regulation of credit eligibility information provided by credit providers to debt collectors that are small business operators. | Noted | N/A<br><br>Recommendation 22 will be considered as part of second-stage response to ALRC recommendations. | N/A |
| 23 | That consideration be given to provide increased funding for the OAIC to effectively and efficiently investigate breaches of the credit reporting provisions. | Noted | N/A | N/A |
| 24 | That consideration be given to the inclusion of consumer remedies, similar to those that exist in the National Consumer Credit Protection Act such as compensation, for consumers adversely affected by contraventions of the credit reporting provisions. | Accept | Clause 25 – compensation orders<br><br>Clause 25A – other orders to compensate loss or damage | 194–195 |
| 25 | That the definition of 'court proceedings information' be reconsidered to ensure that summonses cannot be listed on a consumer's credit information file. | Accept | Schedule 2, item 12 – definition inserted into subsection 6(1) of Act<br><br>The Government has considered the definition of | 105 |

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| | | | 'court proceedings information' and considers that any ambiguity has been addressed in the EM. | |
| 26 | That the definition of 'identification information' be reviewed to ensure that it does not restrict the ability of credit reporting agencies and credit providers from meeting other regulatory requirements. | Accept | Schedule 2, item 34 – definition inserted into subsection 6(1) of Act<br><br>The Government has reviewed the definition and considers it to be appropriate. | 110 |
| 27 | That section 181 be reviewed to provide for greater clarity and certainty in the meaning of 'publicly available information' as proposed by the OAIC. | Accept in principle | Clause 6N – meaning of 'credit information'<br><br>The Government considers this issue would be best dealt with by providing further explanation of the meaning of 'publicly available information' in the Credit Reporting Code of Conduct. | 123–124 |
| 28 | That the meaning of 'default information' be reviewed to ensure that statute-barred debts are prohibited from being listed. | Accept | Paragraphs 6Q(1)(c) and 6Q(2)(e) | 125–126 |
| 29 | That consideration be given to the inclusion of provisions for grace periods in relation to information in repayment histories. | Accept in principle | N/A<br><br>The Government agrees that this matter should be addressed in the Credit Reporting Code of Conduct. | N/A |
| 30 | That section 192 be reviewed to ensure that onerous conditions are not placed on individuals accessing their credit reporting information via the National Relay Service, in particular the need to provide written | Accept | Subclause 6L(3) – meaning of 'access seeker' | 122 |

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| | authorisation. Further, the committee recommends that the Department of the Prime Minister and Cabinet, in undertaking the review, consult the National Relay Service and the OAIC. | | | |